IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3891 of 1997
with
SPECIAL CIVIL APPLICATION Nos. 3892 of 1997, 3893 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAG PRECISION BEARINGS LTD

Versus

SALES TAX OFFICER (ENFORCEMENT)

Appearance:
1. Special Civil Application No. 3891 of 1997
MR KH KAJI for Petitioner No. 1
MR. SUDHIR MEHTA, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 27/02/2003

C.A.V. JUDGEMENT (Per : MR.JUSTICE K.M.MEHTA)

1. FAG Precision Bearings Ltd.-petitioner has filed

this petition being Special Civil Application 3891 of 1997 under Articles 226 and 227 of the Constitution of India with a prayer that this court may issue appropriate writ, direction or order quashing and setting aside notices dated 17.2.1997 and consequent orders dated 17.3.1997 passed by the Deputy Commissioner of Sales Tax under Section 42(1) of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "Local Act") read with Rule 37A of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as "GST Rules"). The petitioner has further prayed that assessment orders for the period 1.9.1976 to 31.8.1980 be quashed and further prayed to restrain permanently respondent No. 1, The Sales Tax Officer (Enforcement), Baroda and respondent No. 3, The Sales Tax Officer, Division 2, Baroda, from passing any assessment orders against the petitioner for the period 1.9.1976 to 31.12.1984 as the same are time barred. The petitioner has further prayed to restrain respondent Nos. 1 and 3 from raising any consequential demand of tax and direct the respondents to refund to the petitioner the sales tax collected by them or if it is paid by the petitioner along with return as per the direction of the Supreme Court of India along with interest at the rate of 24% per annum from the respective dates of payment till the date of refund.

2. The facts giving rise to this petition are as under:

2.1 FAG Precision Bearings Limited, Baroda, petitioner, is a company having its registered office at Bombay and its head office and factory at Baroda. It is registered as a dealer under the Central Sales Tax Act, 1969 (hereinafter referred to as "the Central Act") as well as the Local Act. The petitioner sells its goods within and outside the State of Gujarat. It has branch offices at various places in India. At places where the petitioner has branch offices, the petitioner despatches goods to its branch offices from time to time and the said branch offices subsequently sell the goods in the State in which they are located. The said sales effected by the branch offices are subjected to local sales tax by the States, wherein the branch offices are located. In respect of sales effected directly by the petitioner in other States, the petitioner pays sales tax under the Central Act. It is subjected to tax under the Local Act in respect of the sales effected by it within the State of Gujarat.

2.1A Along with Special Civil Application No. 3891 of 1997, Special Civil Application Nos. 3892 of 1997 and

2893 of 1997 were heard as they raise common question of law in this behalf. However, we narrate the facts of Special Civil Application No. 3891 of 1997 for the sake of convenience.

2.2 Before we appreciate the controversy raised in this petition, the learned counsel for the petitioner has invited our attention to the provisions of the Local Act. Local Act is an Act to consolidate and amend the law relating to the levy of a tax on the sale or purchase of certain goods in the State of Gujarat. Section 2 of the Local Act provides for definition. Section 2(10) defines the term "dealer" so as to mean any person who buys or sells goods in connection with his business and includes other persons stated therein. Section 2(25) of the Local Act provides for "registered dealer" so as to mean a dealer registered under the provisions of the Act. Section 2(28) of the Local Act provides for the term "Sale" which means a sale of goods made within the State for cash or deferred payment or other valuable consideration including certain other aspects in the said definition. Section 3 of the Local Act provides for "incidence of tax" which is a charging section under the provisions of the Act. Chapter V of the Local Act provides for declarations, returns, assessments, payments, penalty, recovery and refund of tax etc. Section 40 provides for declaration and returns to be filed under the provisions of the Act. Section 41 provides for assessment of taxes. The said Section provides for power to the Commissioner and pass assessment order based upon the reasons to be recorded in writing regarding tax due from any dealer during the year in question. Section 41 provides various contingencies where assessment has to be filed. Section 42 provides for time limit for completion of assessment. Section 42 of the Local Act reads as under:

"42(1) No order of assessment for a year commencing on the 1st day of April, 1998, or part of such year or any year thereafter or part of such year shall be made under sub-section (3) or (4) of Section 41 at any time after the expiry of three years from the end of the year in which the last monthly, quarterly or, as the case may be, annual return is filed.

(2) Where the Commissioner issues a notice under sub-section (6) of Section 41, to any dealer for assessment of tax in respect of any period, no order of assessment shall be made for such part of the period, if any, as is prior to -

(a) a period of eight years ending on the last date of the year immediately preceding the year in which such notice is issued, in a case where the Commissioner has reason to believe that such dealer has failed to apply for registration with intention to defraud Government revenue; and

(b) a period of four years ending on the last date as aforesaid, in any other case.

Provided that for the purpose of this section if it is considered necessary so to do, the State Government may, subject to such conditions as it may deem fit, and the Commissioner may, subject to such conditions as may be prescribed by a general or special order, extend, either generally or specially, the period specified in sub-section (1):

Provided further that where a fresh assessment is required to be made in pursuance of any order under Section 65, 67 or 69 or in pursuance of any order of any court or authority, such fresh assessment shall be made at any time within three years from the date of such order:

Provided also that in computing the period of limitation for the purpose of this section, any period by which the period of limitation is extended under the first proviso or any period during which assessment proceedings are stayed by an order or injunction of any court or authority shall be excluded."

2.3 Section 44 of the Local Act provides for reassessment of turnover escaping assessment.

2.3A Government of Gujarat also enacted Rules called Gujarat Sales Tax Rules, 1970. Rule 37A of the Gujarat Sales Tax Rules, 1970 reads as under:

"37-A Conditions subject to which Commissioner may grant extension -

Conditions subject to which the Commissioner may, under the first proviso to sub-section (1) of Section 42 extend the assessment proceedings of a dealer or a class of dealers, shall be as

follows, namely:

(1) no assessment proceeding shall be extended by the Commissioner for a period more than five years at any time.

(2) the Commissioner shall reduce in writing the reasons and circumstances necessitating extension of any proceedings in respect of a dealer or a class of dealers."

2.4 The learned counsel for the petitioner has contended that for assessment period 1.9.1976 to 31.8.1984, the second respondent i.e. the Dy. Commissioner of Sales Tax, Baroda, passed various orders from time to time purporting to extend time for making assessment under the Local Act which Act provided time limit of three years upto 31.3.1979 and later on for two years for completing assessment. The said extension orders were passed by the second respondent under Section 42(1) of the Local Act read with Rule 37A of the GST Rules. The ground given for extension was thus:

"Since some more time will be taken and assessment proceedings are not likely to be completed within the prescribed time, and the assessment for the period 1.9.1976 to 31.8.1984 for the assessee cannot be completed within time limit prescribed under Section 42(1) of the Local Act, it was considered proper to stay the assessment in the case of the said assessee upto 31.8.1988 and in this respect show cause notice was given vide letter dated Nil as to the period of assessment should not be extended."

2.5 The assessee made representation against the said show cause notice. After the representation of the assessee, the Deputy Commissioner of Sales Tax was pleased to pass the following order:

"I under the authority conferred on me under Section 9(2) of the Central Sales Tax Act, 1956, read with Rule 37A of the Gujarat Sales Tax Rules, 1969, hereby order that the assessment in respect of M/s. Precision Bearings India Limited, Baroda, who is registered vide registration No. 40602801/Guj 9 B 81 under Local-Central Sales Tax Acts and who is under the jurisdiction of Sales Tax Officer (1) Div. (6) Enforcement, Baroda for the period 1.9.1976 to

31.8.1984 be stayed upto 31.8.1988."

2.6 Being aggrieved and dissatisfied with the said action, the petitioner filed Special Civil Application No. 5343 of 1987.

2.7 The said petition was heard by a Division Bench of this court (Coram: G.T. Nanavati, J (as he was then) and Y.B. Bhatt, J) on February 12/13, 1992. The said decision is reported in (1993) 90 STC 294. The Division Bench, after considering various contentions raised by the learned counsel for the petitioner and the learned counsel for the Revenue, dismissed the petition of the petitioner.

2.8 Being aggrieved and dissatisfied with the aforesaid judgement of this court, the petitioner filed appeal before the Hon'ble Supreme Court. It may be noted that during the pendency of the petition before the High Court there was stay of assessment for the period covered by the said order. However, when Special Leave to appeal was granted by the Supreme Court, stay was refused. Consequently, assessment orders were passed against the assessee for some years within the period 1.9.1976 to 31.12.1984 both under the Central Act and Local Act.

2.9 The Hon'ble Supreme Court in the case of FAG PRECISION BEARINGS VS. SALES TAX OFFICER (I) AND ANOTHER reported in (1996) 104 STC 143 reversed the decision of this court and allowed the appeal of the assessee. The Hon'ble Supreme Court however considered Section 42 of the Gujarat Sales Tax Act and Rule 37A of GST Rules and observed on page 147 as follows:

"..... We cannot accept this as a good reason. The aforestated power to stay assessment proceedings can be exercised only in extraordinary circumstances and for supervening reasons which cannot be attributed to the default or failure of the assessing authorities. It would be a valid exercise of the power to stay assessment proceedings of a class of assessees, for example, when a point of law involved in such assessments is pending decision in a higher court. It would be a valid exercise of such power in an individual case where, for example, search and seizure of the assessee's premises has unearthed material which requires to be sifted and analysed before a satisfactory assessment order can be passed. It is not enough that the order should state, as has been done in the

present case, that the assessment proceedings were pending and would take "some more time".

Under the terms of rule 37A, the Commissioner is required to put in writing the "reasons and circumstances" that necessitate the stay of proceedings. The stay of assessment proceedings has consequences of a civil nature upon an assessee, which the High Court has, as aforesaid, noted. The more the time that elapses the more difficult it is for the assessee to prove his accounts and claim set off, exemptions and the like. We take the view that, in the circumstances, the power under rule 37-A may not be exercised by the Commissioner without first giving to the assessee notice to show cause why his assessment proceedings should not be stayed for a stated period. The notice should set out what the reasons and circumstances are which, according to the Commissioner, necessitate such stay so that the assessee has the opportunity of meeting the same. This is a requirement of natural justice that, having regard to the scope of rule 37-A, requires to be read into it.

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In the premises, the impugned order must be set aside. Consequently, all proceedings taken and assessment orders passed on the strength thereof must also be set aside. The Commissioner of Sales Tax shall be entitled, if so advised, to issue to the appellant a notice to show cause why assessments for the period 1st September, 1976 to 31st August, 1984, should not be stayed for a stated period for the reasons and in the circumstances to be set out therein, and he may proceed thereafter in the manner laid down above. This notice he must issue, if so minded, within 16 weeks. If this is not done within 16 weeks, all amounts collected as and by way of sales tax for the period 1st September, 1976 to 31st March, 1984, shall forthwith be refunded to the appellant."

2.10 Learned counsel for the petitioner submitted that in view of the judgement of the Hon'ble Supreme Court, even the assessments which were made during the pendency of the appeal before the Hon'ble Supreme Court, are also required to be quashed and set aside. He submitted that the assessment orders passed for assessment years

1.9.1976 to 31.8.1984 were set aside. However, the Hon'ble Supreme Court has permitted the respondent to issue a fresh notice to the appellant, if so advised, to show why assessments for the period 1.9.1976 to 31.8.1984 should not be stayed for a stated period for the reasons and in the circumstances to be set out therein and he may proceed in the manner laid down in the judgement provided that such notice is issued within a period of 16 weeks from the date of the order. The Hon'ble Supreme Court further directed that the amounts collected by way of sales tax for the period 1.9.1976 to 31.3.1984 be refunded to the petitioner.

2.11 Pursuant to the aforesaid judgement of the Hon'ble Supreme Court, the Deputy Commissioner of Sales Tax, second respondent, issued various notice dated 17.2.1997 for the period 1.9.1976 to 31.12.1984 calling upon the petitioner to show cause as to why extension should not be made for passing assessment orders upto various dates mentioned in the said notices. In the show cause notices it was stated that whether the transactions which were entered into by the petitioner are inter State sales or branch transfers and the authority has to consider this aspect, hence the assessment proceedings ought to have been extended upto 31.12.1994. If the assessee has any objection, the assessee can file reply to the said show cause notice.

2.12 The assessee filed reply dated 3.3.1997. In the reply the assessee/petitioner contended that the said show cause notices were invalid and without jurisdiction for the reasons given in the reply to show cause notices that the petitioner had shown in the periodical returns large number of consignment of branch transfer transactions as it was necessary to scrutinise whether the said transactions were inter-State or branch transfers it was necessary to extend time limit for making assessments.

2.13 It is the case of the petitioner that as per the judgement of the Hon'ble Supreme Court the said assessment orders passed for the period 1.9.1976 to 31.8.1980 have been set aside. For the remaining period 1.9.1980 to 31.12.1984 no assessment orders were passed.

2.14 The petitioner stated that the reasons given in the show cause notices were not valid or justifiable reasons as per the ratio of the decision of the Hon'ble Supreme Court in the petitioner's own case which required that (i) there should be extraordinary circumstances; (ii) supervening reasons which could not be attributed to

the default or failure of the assessing authorities. The petitioner in the reply submitted that the books of accounts and all other records for the period 1.9.1976to 31.8.1980 were already with the Department for last 13 years as they were seized by the Sales Tax authorities. The petitioner for the reasons set out in the reply contended that the show cause notices were illegal, without jurisdiction and contrary to the ratio of the judgement of the Hon'ble Apex Court.

2.15 The second respondent by his order dated 17.3.1997 rejected all the contentions of the petitioner and passed orders under Section 42(1) of the Local Act extending time for making assessment as per the various show cause notices. In the said order the second respondent i.e. the Deputy Commissioner of Sales Tax, Baroda, gave the following reasons:

(i) As per the judgement of the Supreme Court we are giving an opportunity of hearing to the dealer.

(ii) as per the judgement of this Court in the case of Prabhat Solvent which is under Section 42 of the Local Act, time limit is not over and there is already matter pending in the court and as per the judgement in the case of Prabhat Solvent, assessment proceedings 1980 to 1993 is to be stayed which is legal and valid.

(iii) In the case of the petitioner whether the transactions were inter State sales or branch transfers will have to be considered.

2.16 Being aggrieved and dissatisfied with the said order of the Deputy Commissioner of Sales Tax, the petitioner has filed this petition under Articles 226 of the Constitution of India.

3. Mr. K.H. Kaji, learned counsel for the petitioner has raised the following contentions.

(i) The reason for extending the time for scrutinizing whether the consignment transactions were inter State sales or consignment transactions were required to be scrutinised, is not a valid ground for seeking extension of time as the default is solely attributable to the failure of assessing authorities to scrutinise the records which are already with them for some of the years of relevant period for the last several years. It was submitted that similar ground has not been approved by the Supreme Court in the aforesaid judgement.

Thus no extraordinary circumstances have been pointed out or made out for extending the time for making the assessment.

(ii) The petitioner has never delayed or evaded reply to any letter or supplying any material asked for by the Department at any time.

(iii) The notices issued for various periods are contrary to Section 42(1) proviso and Rule 37A as the said Rule does not permit any such extension as sought to be made.

(iv) The judgement of the Supreme court did not grant blanket permission to the second respondent to extend time as it has clarified that the Deputy Commissioner shall be entitled to issue a show cause notice, "if so advised" which showed that any fresh show cause notice could only be issued if it could otherwise be issued for the reasons which would be justifiable on the ratio of the Supreme Court judgement.

3.1 The learned senior counsel for the petitioner has submitted that the reasons given by the Deputy Commissioner of Sales Tax for staying the assessments are almost identical in all matters. Identical notices have also been issued to the petitioner and orders have been passed accordingly. The said reasons are contrary to the ratio of the judgement of the Hon'ble Supreme Court in the petitioner's own case and therefore the orders of the Deputy Commissioner of Sales Tax are illegal and bad in law. He has further invited our attention to the relevant provisions of the Act and also judgement of the Hon'ble Supreme Court as well as this court and the relevant paragraphs have been extracted earlier. According to the learned counsel for the petitioner the reasons given by the Deputy Commissioner of Sales Tax are not in consonance with the judgement of the Hon'ble Apex Court. Therefore, the orders are required to be quashed and set aside and the petition is to be allowed.

3.2 The learned counsel for the petitioner has further relied on the decision of a Division Bench of this court in the case of GUJARAT STEEL TUBES LTD. V. SALES TAX OFFICER reported in (1998) 110 STC 401 in which on page 404 at paragraphs 6 and 7 it is observed as follows:

"Para 6 - In the instant case, as the record stands, there were only two orders issued purporting to stay the proceedings for the years

1983-84 and years 1982 to 1985.....
Both these orders, in our opinion, do not give any reason, much less any cogent reason, for staying the assessment proceedings. They vaguely mention about assumption of consent on the part of the assessee for waiving the show cause notice. Both the orders are printed orders with some blanks, which are filled in and even the mention about assumption of consent of the assessee appears in the printed matter. When the respondent-authority was required to give a show cause notice under rule 37A of the said Rules before making any order staying the proceedings, we fail to understand as to how and in what manner an assumption about the consent of an assessee could be made in absence of any positive consent being given by the assessee. We do not find any contemporaneous record to indicate that any consent was given by the assessee. We are, therefore, not prepared to accept the stand reflected in the orders that the proceedings were stayed on the basis of the consent of the assessee.

Mere pendency of the assessment proceedings cannot itself be a ground for staying the proceedings, as held by the Supreme Court in FAG PRECISION BEARINGS V. SALES TAX OFFICER (I) (1997) 104 STC 143. The power to stay the proceedings can be exercised only in extraordinary circumstances and for supervening reasons, which cannot be attributed to the default or failure of the assessment officers and it would not be a good or sufficient reason just to say that since the proceedings are pending, stay is being granted.

Para 7 - It is not disputed that no notice under rule 37A of the said Rules was issued in respect of the years in question for which the assessment would have been time barred to show cause as to why the proceedings should not be stayed. We are also satisfied that the two stay orders which are at annexure "A" collectively, do not record any valid reason as contemplated by rule 37A of the Rules. Therefore, these two stay orders cannot be sustained and will not have the effect of extending the period of limitation for making the assessment orders."

3.3 The learned counsel for the petitioner has relied

on another judgement of a Division Bench of this court in the case of JAVER JIVAN MEHTA V. ASST. COMMISSIONER OF SALES TAX reported in (1998) 111 S.T.C. 199.

3.3A The learned counsel for the petitioner submitted that if this court comes to the conclusion that the petitioners are entitled for the refund of the tax already paid, then this court may also pass order granting interest on the said refund. In support of the aforesaid contention, the learned counsel for the petitioners has relied on the following decisions:

(i) RAJA RAM KUMAR BHARGAVA VS. U.O.I. reported in 171 ITR 254 (SC) at 262 it is observed that interest to be awarded to do justice between the parties even though no provision in the Act.

(ii) SALONAH TEA CO. VS. SUPT. OF TAXES reported in 173 ITR 42 (SC) in which it is stated that when tax is collected without authority of law, refund to be granted when assessment is set aside as being without jurisdiction.

(iii) D.J. WORKS VS. DEPT. CIT reported in 195 ITR 227 (Guj) - interest payable on interest on refund, as such interest partakes the character of excess amount of tax refundable on regular assessment.

(iv) CHIMANLAL S. PATEL VS. CIT reported in 210 ITR 419 (Guj.) follows the case of D.J. Works as regards interest on interest on refund of tax.

(v) CIT VS. NARENDRA DOSHI reported in 254 ITR 606 (SC) - affirming above Gujarat cases as regards interest on interest.

3.4 As regards limitation, he has further submitted that extension orders are passed after period of limitation expired in respect of all these assessment orders. So the orders staying assessment are illegal and invalid and the authority cannot extend the stay of assessment when the period of limitation is already expired. He further submitted that the judgement of the Hon'ble Supreme court does not enable the authority to get over or by-pass the period of limitation because the Supreme Court in the judgement itself observed that the Department can issue notice, if so advised, to the petitioner in accordance with law and if the notices are barred by limitation, the authority cannot create extension of limitation by virtue of the judgement of the

Hon'ble Supreme Court. In support of the aforesaid contention, the learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of S.S. GADGIL VS. LAL AND CO. reported in 53 ITR 231.

3.5 The learned counsel for the petitioner has further relied on the following decisions:-

1. J.P. JANI, I.T.O. V. INDUPRASAD DEVSHANKER BHATT reported in 72 I.T.R. 595 (SC).

2. S.C. PRASHAR VS. VASANTSEN DWARKADAS reported in 29 I.T.R. 857

3. COMMISSIONER OF INCOME TAX VS. SHANTILAL PUNJABHAI reported in 57 ITR 58.

3.6 On behalf of the respondent Mr. Sudhir Mehta, learned A.G.P. has appeared. He has relied on the affidavit in reply filed on behalf of respondent No. 2, namely, Jalamsinh J. Chauhan, Deputy Commissioner of Sales Tax, Division IV, Vadodara. His submission was that as per the judgement of the Supreme Court the Department has issued show cause notices and therefore the said show cause notices and the orders passed thereunder is legal and valid and this court may not entertain the petition under Article 226 of the Constitution of India.

3.7 As regards historical background of Section 42 and the contention raised for time limit for completion of assessment, the learned counsel for the petitioner has relied on one passage from the judgement of this court in the case of PAG PRECISION BEARING LIMITED VS. S.T.O. reported in (1993) 90 Sales Tax Cases 294 in which on pages 303-304 this court has observed as under:

> "Prior to May 6, 1970, there was no provision in the Act prescribing time limit within which assessment proceeding was required to be completed. It appears that the Legislature thought of making a provision for time limit for completion of assessments in view of the report of the Sales Tax Enquiry Committee appointed by the Government of Gujarat, which gave its report in the year 1967. The position of assessment cases lingering for years was not regarded as satisfactory, as the dealers had to preserve account books for long periods and it used to become difficult for them to produce evidence at

a very late stage to support their claims of set off, exemptions, etc. The position was regarded as unsatisfactory also because delay in assessments was jeopardising Government revenues and the recoveries were becoming difficult. Considering the difficulties of the administration and the staff and the desirability of exerting necessary pressure on the administration to carry out such assessments, the committee recommended that a statutory time limit be provided for completion of assessments. The committee recommended three years as the time limit for completion of assessments and that is how, initially, the Legislature had provided three years' time limit for completion of assessment proceedings. Subsequently, in 1979, the time limit was amended by reducing it to two years. But, while providing for the time limit for completion of assessments, the Legislature also simultaneously provided for stay of assessment proceedings of a dealer or class of dealers, if considered necessary by the State Government or the Commissioner. The Legislature also simultaneously provided that in computing the period of limitation for the purpose of Section 42, any period, during which assessment proceedings are stayed under the first proviso or by an order or injunction of any court or authority, shall be excluded. Therefore, while trying to find out the nature and extent of right or the protection given to the assessee by the said provision, we will have to read it as a whole. If the said provision is read in this manner, then, it becomes apparent that the assessment proceedings will become time barred on expiry of two years, provided within that period, they are not stayed. In other words, if the assessment proceedings are stayed before the expiry of the period of limitation, then, in that case, the assessment proceedings will not become time barred immediately on expiration of the said period of two years, as the period during which the proceedings remained stayed will have to be excluded while computing the period of limitation. If assessment proceedings are stayed, then, in such a case, no right in favour of the assessee will come into existence on the expiration of the period of two years. Therefore, even if we proceed on the basis that a right in favour of the assessee comes into existence on expiration of the period of

limitation, that stage will not be reached till the period of limitation, as extended because of the stay, becomes over. Therefore, it is not possible to accept the contention that on expiration of the period of two years, the power to assess comes to an end. As pointed out by us earlier, the combined effect of the two provisions is to extend the period of limitation by such time, during which the assessment proceeding is stayed, and, therefore, the power to complete that assessment will not come to an end immediately on expiration of two years".

3.8 The Division Bench of this Court in Special Civil Application No. 5343 of 1987 which is reported in (1993) 90 STC 294, observed on page 305 as under:

"As pointed out earlier, while providing three years' time limit, a balance was sought to be struck between the difficulties of the department in completing assessment proceeding expeditiously and the likely harassment or hardship to be suffered by the assessee if the assessment proceedings linger on for a long time. Therefore, the Legislature, while providing for the time limit, also provided for stay of assessment proceedings and exclusion of the period, during which assessment proceedings remained stayed while computing the period of limitation. The assessment proceedings may be required to be stayed not only because of any difficulty in completing assessment proceeding individually, but all assessments generally. Faced with an emergency or some unexpected situation, it may become necessary for the Government or the Commissioner to stay the proceedings in order to save the period of limitation. A war or a strike by the Officers of the Sales Tax Department, for example, may make it impossible or difficult to complete the assessment proceedings within the period of limitation. In such cases, in order to see that the Government revenue does not suffer, the Government or the Commissioner may be required to stay the assessment proceedings. Again, for example, if an important point of law is decided, say by the High Court, and the matter is carried to the Supreme Court, then the assessment proceedings involving such a question may have to be stayed not only for the benefit of the department, but also for the benefit of the

assessee in order to avoid duplication of work later on. Thus, considering the nature and extent of the power or the function, we are of the opinion that the said function is administrative in nature."

3.9 He has further tried to justify the ground stated in the various show cause notice dated 17.12.1997 and also the order passed by respondent No. 2 dated 17.3.1997 rejecting the contention of the petitioner. He submitted that the aforesaid show cause notice has been issued and the order has been passed pursuant to the order passed by the Hon'ble Supreme Court in the case of FAG PRECISION BEARINGS (supra). He further submitted that why the Legislature has prescribed staying of the show cause notice and why the same has been enacted has been succinctly set out by the Division Bench of this Court in PAG PRECISION BEARING LIMITED (supra) and that part of the judgement has not been disturbed by the Hon'ble Supreme Court and therefore he is entitled to rely upon the same.

CONCLUSION:

4. We have considered the judgement of the Hon'ble Supreme Court in the case of FAG PRECISION BEARINGS (supra), Division Bench judgements of this court in the case of Gujarat Steel Tubes Ltd. (supra) and also Javer Jivan Mehta (supra). We have also gone through the contents of the show cause notices and the orders passed by the authorities. In our view, reasons given in the show cause notices as to whether transactions are inter-State sales or branch transfers and for that the Department decided to stay the proceedings are the reasons not contemplated by the judgement of the Hon'ble Supreme Court in FAG PRECISION BEARINGS (supra) and in fact, as we have stated in the facts, the books of account of the petitioner and all other records were lying with the Department and bills and vouchers etc. were available to the authorities and the authorities should have verified the same. Therefore, the ground stated in the show cause notice is not relevant or germane and the is contrary to the judgement of the Hon'ble Supreme Court in the case of FAG PRECISION BEARINGS (supra) and respectfully following the decision of a Division Bench of this court, the said show cause notices are also contrary to the decision of this court. Therefore, the said show cause notices are liable to be set aside.

4.1 It may be noted that the authority has passed

orders on 17.3.1997 in which the first ground given was as per the decision of the Supreme Court the authorities have given an opportunity of hearing for which the assessee has no quarrel. As regards second ground which is not based on the decision of the Supreme Court, the said ground was not mentioned in the show cause notice. Consequently, how the judgement in the case of Prabhat Solvant is relevant to the proceedings has not been stated by the Department and this reason is clearly an afterthought which is not mentioned in the show cause notice and same is not relevant or germane to the present proceedings. The reasons given for staying assessment is altogether different in this behalf. If question of law which is raised in the petitioner's case is identical one which is raised in other appeal before the Supreme Court and on that ground or any other extraordinary ground is stated, the same can be relevant or germane. But this ground is not relevant or germane. The Department required more time to complete assessment is not relevant. The said ground is also contrary to the judgement of the Supreme Court. Therefore, we set aside the orders passed by the Deputy Commissioner of Sales Tax.

4.1A The learned counsel for the petitioners has also stated that as the Department has collected money without authority of law and jurisdiction, the petitioners are entitled to interest on the amount which has already been paid because the Hon'ble Supreme Court did not grant stay of the assessment proceedings.

4.1B In view of the aforesaid facts and circumstances of the case, the petitioners are entitled to the following relief.

4.1C In Special Civil Application No. 3891 of 1997 assessment period 1976-77 to 1984 -

(i) For assessment year 1976-77 to 1979-80 the Hon'ble Supreme Court had quashed the assessment orders passed during pendency of appeal before the Supreme Court. Therefore, assessment order passed on 29.4.1995, 29.2.1996, 30.9.1996 for the years 1976-77 to 1979-80 during the pendency of the said appeals stood quashed. Though the petitioner had filed appeals before the Assistant Commissioner of Sales-tax during the pendency of appeals before the Supreme Court, those appeals are treated as infructuous and so also further appeals by the assessee to the Sales Tax Tribunal filed on 3.8.2002 against dismissal of appeals by the Assistant Commissioner of Sales Tax on 204.2002 are also treated as

infructuous as assessment orders stood quashed.

(ii) It may be noted that no assessment orders were passed from 1980-81 to 1984.

(iii) Assessment orders pursuant to fresh extension orders dated 15.3.1997 during the pendency of this Special Civil Application are quashed. All amounts collected as and by way of Sales tax from 1.9.1976 to 31.3.1984 be refunded to the appellant (as per the Supreme Court order) and interest at the rate of 12% from the date of payment till date of refund is granted.

4.1D So far as Special Civil Application No. 3892 of 1997 for assessment period 1985, 1988-89 to 1990-91 is concerned, assessment orders for 1988-89 and 1990-91 are passed. Against the said orders the petitioner filed appeals before the Assistant Commissioner of Sales tax (Appeals), Vadodara, which are pending. Assessment orders and the demand raised thereunder are required to be quashed as extension orders are not valid. Tax paid with returns be refunded as per the decision of the Hon'ble Supreme Court for earlier years. Interest at the rate of 12% is awarded from the date of payment till date of refund.

(i) No assessment orders are passed for 1985, 1989-90. Tax paid with return be refunded as per the decision of the Supreme Court for earlier years. Interest at the rate of 12% is awarded from the date of payment till date of refund.

4.1E As regards Special Civil Application No. 3893 of 1997, for assessment year 1986, assessment order was passed on 31.3.1993 and against which appeal is filed before the Assistant Commissioner of Sales Tax which was decided on 27.10.1997. Demand of Rs. 87,256/- was raised by appellate order. Demand notice was issued and Rs. 38,962 (GST) & Rs. 565 (CST) paid.

(i) For assessment year 1987, assessment order was passed on 30.6.1995 which resulted in refund. Hence no proceedings are taken for 1987. Assessment orders for 1986 and 1987 are required to be quashed and also demand notices are required to be quashed. Tax paid along with returns be refunded as per the judgement of the Supreme Court for earlier years. Interest at 12% from date of payment till date of refund is awarded.

5. For carrying out directions which we have stated in judgement particularly paragraphs 4.1B to 4.1E of the

judgement, the respondents are directed to carry out such directions and also grant consequential refund to the petitioner within four months from today.

6. As regards limitation, We do not express any opinion on this point since we have held the first issue in favour

7. The petitions are allowed accordingly. Rule is made absolute in each of the petitions.

(A.R. DAVE, J)

(K.M. MEHTA, J)
(pkn)